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BEFORE THE ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON
FOR UTILITY SERVICE BY ITS SUN CITY
WATER DISTRICT

DOCKET NO. W-01303A-07-0209

TOWN OF YOUNGTOWN
REPLY BRIEF

The Town of Youngtown ("Town" or "Youngtown") hereby submits its reply brief in the above captioned matter. Respectfully, all customers served by Arizona-American Water Company (the "Company") in the Sun City Water District (the "District"), not just those north of Grant Road, are entitled to facilities that provide *minimum* fire flows. The Company's patrons are entitled safe and equal service within the District. The record establishes adoption of the recommendations of the Sun City/Youngtown Fire Flow Task Force (the "Task Force") and approval of a fire flow cost recovery mechanism ("FCRM") to finance the implementation of the Patron Safety Plan as the only viable method of providing for the patrons' safety and an equal level of facilities and service.

1 **I. ALL PARTIES AGREE THE PATRON SAFETY PLAN**
2 **BENEFITS RATEPAYERS.**

3 The Residential Utility Consumers Office ("RUCO") acknowledges "ratepayers
4 would benefit" by implementation of the Patron Safety Plan¹ and that the ratepayers want
5 and need the Patron Safety Plan, which will improve public fire safety in the Sun City Water
6 District ("District") when implemented.² Nevertheless, without a legally cognizable basis,
7 RUCO opposes the Patron Safety Plan. RUCO's speculative objections should not override
8 the finding by the Task Force, and supported by the record, that the Patron Safety Plan is
9 needed.

10 Staff views the Patron Safety Plan "as a matter of public safety"³ benefitting
11 customers in Sun City, Youngtown and Peoria.⁴ The Staff finds that the Patron Safety Plan
12 provides system benefits beyond fire flow⁵ and is "necessary to provide the same level of
13 service to all ratepayers within the Sun City Water District."⁶

14 Similarly, the Company adopts the Task Force's conclusion that "adequate fire
15 flow is a public safety issue of importance to the entire community and an issue that should
16 be timely addressed."⁷

17 Youngtown is a strong proponent of the Patron Safety Plan because "inadequate
18 fire flow presents critical issues of public health and safety, as well as the disparate and
19 unequal service within the Sun City Water District."⁸

21 ¹ RUCO's Opening Brief (ROB) at 3, L20.

22 ² ROB at 3, L21 - 4, L2

23 ³ Staff Opening Brief (SOB) at 6, L14.

24 ⁴ SOB at 7, L3-8.

24 ⁵ *Id.* at L16-19.

25 ⁶ SOB at 8, L3-9

25 ⁷ Company Opening Brief (COB) at 17, L19-21

1 The Patron Safety Plan is not a Company or Youngtown driven proposal.
2 Rather, it reflects the consensus and recommendation of the Task Force; a group composed
3 of community representatives tasked with examining the Commission's directive in Decision
4 No. 67093 "to determine if the water production capacity, storage capacity, water lines,
5 water pressure, and fire hydrants of Youngtown and Sun City are sufficient to provide the
6 fire protection capacity that is desired by each community."⁹

7 II. BUILT ON A FAULTY FOUNDATION, RUCO'S 8 ARGUMENTS COLLAPSE

9 RUCO's entire argument is premised on a misconception: even though the
10 record in this case shows that the Patron Safety Plan is necessary for the health, safety,
11 comfort and convenience of the Company's patrons, employees and the public, adoption of
12 the Patron Safety Plan is simply discretionary. Respectfully, system improvements designed
13 to provide the *minimum* recommended levels of fire protection throughout the Sun City
14 Water District are not totally discretionary. Safety and equal service concerns cannot be
15 treated as completely discretionary by public service corporations¹⁰ or the Commission.¹¹ In
16 fact, even RUCO is obligated to consider the residential consumer's entire "interest."¹²

17 While there is "no specific Commission rule mandating [the Patron Safety
18 Plan],"¹³ the Commission's regulations indirectly incorporate the International Fire Code's
19 minimum fire flow and fire hydrant spacing requirements.¹⁴

21 ⁸ Youngtown Opening Brief (YOB) at 1, L17-18.

22 ⁹ Decision 67093 at 59-60.

23 ¹⁰ A.R.S. § 40-361(B).

24 ¹¹ Ariz. Const., Art. 15, § 3; A.R.S. § 40-334(A) & (B).

25 ¹² A.R.S. § 40-462(A) provides RUCO is established "to represent the interest of residential utility consumers in regulatory proceedings involving public service corporations before the Corporation Commission." (emphasis added).

¹³ SOB at 8, L.18-19.

1 Furnishing water for fire protection is a public service corporation function
2 under our constitution.¹⁵ Title 40 creates an affirmative obligation on the Company to furnish
3 and maintain equipment and facilities as will promote the safety, health, comfort and
4 convenience of its patrons, employees and the public¹⁶ and prohibit the Company from
5 maintaining rates, service or facilities that grant any preference or advantage to any person
6 or subjects any person to any prejudice or disadvantage or that establishes or maintains any
7 unreasonable difference as to service or facilities.¹⁷

8 Moreover, the Arizona Supreme Court has unequivocally held that a “public
9 service corporation is under a legal obligation to render adequate service impartially and
10 without discrimination to all members of the general public to whom its scope of operation
11 extends,” including the provision of fire prevention service.¹⁸ Where, as in the present case,
12 the Company provides fire flows to some customers, it has a concurrent legal duty to provide
13 at least the minimum recommended levels of that same service to all of its customers.

14 RUCO also leads the Commission on an unproductive and improper search for
15 another funding source for these necessary improvements. The Commission has jurisdiction
16 over public service corporations, including regulating the quality of service provided and the
17 rates charged. The record demonstrates that the Patron Safety Plan is both convenient and
18 necessary for the District’s ratepayers. Therefore, once installed and placed in service, the
19 Company is entitled to a fair return on its investment in this plant.¹⁹ RUCO’s discussion of
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21

22 ¹⁴ A.C.C. R14-2-407(F) as discussed in YOB at 10, L.8-15.

23 ¹⁵ Ariz. Const., Art. 15 § 2.

24 ¹⁶ A.R.S. §40-361(A)

24 ¹⁷ A.R.S. §40-334(A) & (B).

25 ¹⁸ *Veach v. City of Phoenix*, 102 Ariz. 195, 427 P.2d 335 (1967).

¹⁹ Ariz. Const., Art. 15, §3; *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956).

1 alternative funding sources, as well as its discussion of the distinguishable *Town of Gila*
2 *Bend v. Walled Lake Door Company* case²⁰ is irrelevant.

3 RUCO's reliance on the *Gila Bend* case is misplaced. First, *Gila Bend*
4 involved the enforceability of a municipality's contract with a third party business whereby
5 the municipality voluntarily agreed to construct a water line to improve fire flow in order to
6 entice the business to invest in new facilities following a devastating fire and keep its plant
7 in Gila Bend. Under that agreement, Gila Bend owned and operated the line it installed. No
8 such agreement exists in this case. And none of the facilities installed under the Patron
9 Safety Plan will be owned by anyone other than Arizona-American Water Company. The
10 *Gila Bend* case simply does not apply to the facts presented in this case.

11 Article 9, Sections 7 and 10 of the Arizona Constitution clearly create
12 significant barriers to the Town's ability to fund the Patron Safety Plan. But whether the
13 barriers are insurmountable is not relevant to the question before the Commission: Is
14 implementing the Patron Safety Plan consistent with the Company's obligation to promote
15 the safety, health, comfort and convenience of its patrons, employees and the public, as well
16 as its obligation to render adequate service impartially and equally within the Sun City Water
17 District? The answer is yes; all "evidence" presented in this matter demonstrates that the
18 Plan unequivocally satisfies these criteria.

19 **III. THE FCRM SHOULD BE APPROVED**

20 For the reasons set forth in the Town's Opening Brief,²¹ the Company's
21 Opening Brief²² and the Staff's Opening Brief,²³ the FCRM is an appropriate and reasonable
22 mechanism to fund the Patron Safety Plan.

24 ²⁰ 107 Ariz. 545, 490 P.2d 551 (1971). ROB at 4-8.

25 ²¹ YOB at 14-16.

²² COB at 19-24.

1 RUCO opposes the FCRM by relying on *Scates v. Ariz. Corp. Comm'n.*²⁴
2 *Scates* does not assist RUCO's opposition. In *Scates*, the Commission granted a rate
3 adjustment, outside of a full rate case, after it considered only the cost of particular services.
4 The *Scates* court, based upon the specific facts presented, properly concluded that the
5 Commission acted improperly in adjusting rates without considering the overall impact on the
6 utility's return or the utility's fair value rate base in setting rates.²⁵ In stark contrast, the
7 Commission, in this case, is considering an "adjustment mechanism" in conjunction with a
8 full rate case. The FCRM merely recognizes that the Company is undertaking a revenue
9 neutral safety related capital improvement program and enables the Company to recover its
10 authorized return after specific health and safety improvements are constructed and placed in
11 service.

12 Importantly, the earnings test proposed by Staff and adopted by the Company is
13 another safeguard to ensure the FCRM complies with *Scates*' direction that the Commission
14 evaluate the overall revenues, expenses and return. All expenditures must be verified to the
15 satisfaction of both the Staff and the Commission and remain subject to further evaluation in
16 future rate cases. Additionally, the earnings test ensures increases allowed under the FCRM
17 will not cause the Company to over earn. In fact, if any FCRM step increase would cause
18 the Company to over earn, the increase would be limited to the level of earnings authorized
19 in the current rate case. This earnings test only benefits the ratepayers. There is no
20 adjustment upward if the earning test indicates the Company is under earning. The FCRM,
21 as proposed, is not a single issue adjustment.

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24 ²³ SOB at 9-14.

25 ²⁴ 118 Ariz. 531, 578 P.2d 612 (1978).

²⁵ *Id.* at 537, 578 P.2d 618

1 The *Scates* court emphasized: "when court's have upheld such automatic
2 adjustment provisions, they have generally done so because the clauses are initially adopted
3 as part of the utilities rate structure in accordance with all statutory and constitutional
4 requirements and, further, because they are designed to ensure that, through the adoption of a
5 set formula geared to a specific readily identifiable cost, utilities profit or rate of return does
6 not change."²⁶ The FCRM is just such an automatic adjustment mechanism, tied to
7 investment in non-revenue producing plant.

8 **IV. CONCLUSION**

9 All parties agree that the Patron Safety Plan will benefit the ratepayers of the
10 Sun City Water District. All parties agree that there is general support for the Plan. No
11 evidence has been presented that the cost of implementing the Plan (\$1.01 per month on the
12 median customer at full build out) will create a hardship on ratepayers. But RUCO alone
13 will not support the Patron Safety Plan and the use of the FCRM as the funding mechanism.

14 The Commission is being asked to rule on the specific facts presented before it.
15 A Commission-ordered Task Force has identified inadequacies and inequality in the
16 facilities used by the Company to furnish water for fire protection purposes. The Task Force
17 approved the Patron Safety Plan, which addresses those inadequacies and inequalities over a
18 four-year period, allowing the rate impact associated therewith to be phased in over a four-
19 year period.

20 The Town respectfully urges the Commission enter an order accepting the Task
21 Force recommended Safety Patron Plan and authorizing the FCRM. The record in this case
22 will permit no other action. Such an order is necessary for the health, safety, comfort and
23 convenience of the Company's patrons, employees and the public.

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²⁶ 115 Ariz. at 535, 578 P.2d at 616 (citations omitted).

1 DATED this 27th day of February, 2008.

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